

CENTER FOR DISABILITY ACCESS
Amanda Seabock, Esq., SBN 289900
Chris Carson, Esq., SBN 280048
Dennis Price, Esq., SBN 279082
Mail: 8033 Linda Vista Road, Suite 200
San Diego, CA 92111
(858) 375-7385; (888) 422-5191 fax
amandas@potterhandy.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Samuel Love,

Plaintiff,

v.

Burlingame Musich-1 LLC, a
California Limited Liability
Company;
CJ Foodville USA, Inc., a California
Corporation; and Does 1-10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Samuel Love complains of Burlingame Musich-1 LLC, a California Limited Liability Company; CJ Foodville USA, Inc., a California Corporation; and Does 1-10 ("Defendants"), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is substantially limited in his ability to walk. He is a paraplegic who uses a wheelchair for mobility.

2. Defendant Burlingame Musich-1 LLC owned the real property located at or about 1849 El Camino Real, Burlingame, California, in December 2019.

3. Defendant Burlingame Musich-1 LLC owns the real property located at

1 or about 1849 El Camino Real, Burlingame, California, currently.

2 4. Defendant CJ Foodville USA, Inc. owned Tous Les Jours located at or
3 about 1849 El Camino Real, Burlingame, California, in December 2019.

4 5. Defendant CJ Foodville USA, Inc. owns Tous Les Jours located at or
5 about 1849 El Camino Real, Burlingame, California, currently.

6 6. Plaintiff does not know the true names of Defendants, their business
7 capacities, their ownership connection to the property and business, or their
8 relative responsibilities in causing the access violations herein complained of,
9 and alleges a joint venture and common enterprise by all such Defendants.
10 Plaintiff is informed and believes that each of the Defendants herein,
11 including Does 1 through 10, inclusive, is responsible in some capacity for the
12 events herein alleged, or is a necessary party for obtaining appropriate relief.
13 Plaintiff will seek leave to amend when the true names, capacities,
14 connections, and responsibilities of the Defendants and Does 1 through 10,
15 inclusive, are ascertained.

16
17 **JURISDICTION & VENUE:**

18 7. The Court has subject matter jurisdiction over the action pursuant to 28
19 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
20 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

21 8. Pursuant to supplemental jurisdiction, an attendant and related cause
22 of action, arising from the same nucleus of operative facts and arising out of
23 the same transactions, is also brought under California's Unruh Civil Rights
24 Act, which act expressly incorporates the Americans with Disabilities Act.

25 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
26 founded on the fact that the real property which is the subject of this action is
27 located in this district and that Plaintiff's cause of action arose in this district.

FACTUAL ALLEGATIONS:

10. Plaintiff went to Tous Les Jours in December 2019 with the intention to avail himself of its goods and to assess the business for compliance with the disability access laws.

11. Tous Les Jours is a facility open to the public, a place of public accommodation, and business establishments.

12. Unfortunately, on the date of the plaintiff's visit, the defendants failed to provide accessible sales counters in conformance with the ADA Standards as it relates to wheelchair users like the plaintiff.

13. On information and belief the defendants currently fail to provide accessible sales counters.

14. These barriers relate to and impact the plaintiff's disability. Plaintiff personally encountered these barriers.

15. By failing to provide accessible facilities, the defendants denied the plaintiff full and equal access.

16. The failure to provide accessible facilities created difficulty and discomfort for the Plaintiff.

17. The defendants have failed to maintain in working and useable conditions those features required to provide ready access to persons with disabilities.

18. The barriers identified above are easily removed without much difficulty or expense. They are the types of barriers identified by the Department of Justice as presumably readily achievable to remove and, in fact, these barriers are readily achievable to remove. Moreover, there are numerous alternative accommodations that could be made to provide a greater level of access if complete removal were not achievable.

19. Plaintiff will return to Tous Les Jours to avail himself of its goods and to determine compliance with the disability access laws once it is represented to

1 him that Tous Les Jours and its facilities are accessible. Plaintiff is currently
 2 deterred from doing so because of his knowledge of the existing barriers and
 3 his uncertainty about the existence of yet other barriers on the site. If the
 4 barriers are not removed, the plaintiff will face unlawful and discriminatory
 5 barriers again.

6 20. Given the obvious and blatant nature of the barriers and violations
 7 alleged herein, the plaintiff alleges, on information and belief, that there are
 8 other violations and barriers on the site that relate to his disability. Plaintiff will
 9 amend the complaint, to provide proper notice regarding the scope of this
 10 lawsuit, once he conducts a site inspection. However, please be on notice that
 11 the plaintiff seeks to have all barriers related to his disability remedied. See
 12 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
 13 encounters one barrier at a site, he can sue to have all barriers that relate to his
 14 disability removed regardless of whether he personally encountered them).

15
 16 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
 17 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
 18 Defendants.) (42 U.S.C. section 12101, et seq.)

19 21. Plaintiff re-pleads and incorporates by reference, as if fully set forth
 20 again herein, the allegations contained in all prior paragraphs of this
 21 complaint.

22 22. Under the ADA, it is an act of discrimination to fail to ensure that the
 23 privileges, advantages, accommodations, facilities, goods and services of any
 24 place of public accommodation is offered on a full and equal basis by anyone
 25 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
 26 § 12182(a). Discrimination is defined, inter alia, as follows:

- 27 a. A failure to make reasonable modifications in policies, practices,
 28 or procedures, when such modifications are necessary to afford

1 goods, services, facilities, privileges, advantages, or
2 accommodations to individuals with disabilities, unless the
3 accommodation would work a fundamental alteration of those
4 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).

5 b. A failure to remove architectural barriers where such removal is
6 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
7 defined by reference to the ADA Standards.

8 c. A failure to make alterations in such a manner that, to the
9 maximum extent feasible, the altered portions of the facility are
10 readily accessible to and usable by individuals with disabilities,
11 including individuals who use wheelchairs or to ensure that, to the
12 maximum extent feasible, the path of travel to the altered area and
13 the bathrooms, telephones, and drinking fountains serving the
14 altered area, are readily accessible to and usable by individuals
15 with disabilities. 42 U.S.C. § 12183(a)(2).

16 23. When a business provides facilities such as sales or transaction counters,
17 it must provide accessible sales or transaction counters.

18 24. Here, accessible sales or transaction counters have not been provided.

19 25. The Safe Harbor provisions of the 2010 Standards are not applicable
20 here because the conditions challenged in this lawsuit do not comply with the
21 1991 Standards.

22 26. A public accommodation must maintain in operable working condition
23 those features of its facilities and equipment that are required to be readily
24 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

25 27. Here, the failure to ensure that the accessible facilities were available
26 and ready to be used by the plaintiff is a violation of the law.
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1 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
 2 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
 3 Code § 51-53.)

4 28. Plaintiff repleads and incorporates by reference, as if fully set forth
 5 again herein, the allegations contained in all prior paragraphs of this
 6 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
 7 that persons with disabilities are entitled to full and equal accommodations,
 8 advantages, facilities, privileges, or services in all business establishment of
 9 every kind whatsoever within the jurisdiction of the State of California. Cal.
 10 Civ. Code § 51(b).

11 29. The Unruh Act provides that a violation of the ADA is a violation of the
 12 Unruh Act. Cal. Civ. Code, § 51(f).

13 30. Defendants’ acts and omissions, as herein alleged, have violated the
 14 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
 15 rights to full and equal use of the accommodations, advantages, facilities,
 16 privileges, or services offered.

17 31. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
 18 discomfort or embarrassment for the plaintiff, the defendants are also each
 19 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
 20 (c).)

21
 22 **PRAYER:**

23 Wherefore, Plaintiff prays that this Court award damages and provide
 24 relief as follows:

25 1. For injunctive relief, compelling Defendants to comply with the
 26 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
 27 plaintiff is not invoking section 55 of the California Civil Code and is not
 28 seeking injunctive relief under the Disabled Persons Act at all.

1 2. Damages under the Unruh Civil Rights Act, which provides for actual
2 damages and a statutory minimum of \$4,000 for each offense.

3 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
4 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

5
6 Dated: January 6, 2020

CENTER FOR DISABILITY ACCESS

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8 By:



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10 Amanda Seabock, Esq.
11 Attorney for plaintiff
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